

## § 682.420

## 34 CFR Ch. VI (7–1–03 Edition)

funds, minus the portion the agency is authorized to deposit in its Operating Fund;

(7) Investment earnings on the Federal Fund;

(8) Revenue derived from the Federal portion of a nonliquid asset, in accordance with § 682.420; and

(9) Other funds received by the guaranty agency from any source that are specifically designated for deposit in the Federal Fund.

(c) *Uses.* A guaranty agency may use the assets of the Federal Fund only—

(1) To pay insurance claims;

(2) To transfer default aversion fees to the agency's Operating Fund;

(3) To transfer account maintenance fees to the agency's Operating Fund, if directed by the Secretary;

(4) To refund payments made by or on behalf of a borrower on a loan that has been discharged in accordance with § 682.402;

(5) To pay the Secretary's share of borrower payments, in accordance with § 682.404(g);

(6) For transfers to the agency's Operating Fund, pursuant to § 682.421;

(7) To refund insurance premiums related to loans cancelled or refunded, in whole or in part;

(8) To return to the Secretary portions of the Federal Fund required to be returned by the Act; and

(9) For any other purpose authorized by the Secretary.

(d) *Prohibition against prepayment.* A guaranty agency may not prepay obligations of the Federal Fund unless it demonstrates, to the satisfaction of the Secretary, that the prepayment is in the best interests of the United States.

(e) *Minimum Federal Fund level.* The guaranty agency must maintain a minimum Federal Fund level equal to at least 0.25 percent of its insured original principal amount of loans outstanding.

(f) *Definitions.* For purposes of this section—

(1) *Federal Fund level* means the total of Federal Fund assets identified in paragraph (b) of this section plus the amount of funds transferred from the Federal Fund that are in the Operating Fund, using an accrual basis of accounting.

(2) *Original principal amount of loans outstanding* means—

(i) The sum of—

(A) The original principal amount of all loans guaranteed by the agency; and

(B) The original principal amount of any loans on which the guarantee was transferred to the agency from another guarantor, excluding loan guarantees transferred to another agency pursuant to a plan of the Secretary in response to the insolvency of the agency;

(ii) Minus the original principal amount of all loans on which—

(A) The loan guarantee was cancelled;

(B) The loan guarantee was transferred to another agency;

(C) Payment in full has been made by the borrower;

(D) Reinsurance coverage has been lost and cannot be regained; and

(E) The agency paid claims.

(Authority: 20 U.S.C. 1072–1)

[64 FR 58634, Oct. 29, 1999]

### § 682.420 Federal nonliquid assets.

(a) *General.* The Federal portion of a nonliquid asset developed or purchased in whole or in part with Federal reserve funds, regardless of who held or controlled the Federal reserve funds or assets, is the property of the United States. The ownership of that asset must be prorated based on the percentage of the asset developed or purchased with Federal reserve funds. In maintaining and using the Federal portion of a nonliquid asset under this section, the guaranty agency must exercise the level of care required of a fiduciary charged with protecting, investing, and administering the property of others.

(b) *Treatment of revenue derived from a nonliquid Federal asset.* If a guaranty agency derives revenue from the Federal portion of a nonliquid asset, including its sale or lease, the agency must promptly deposit the percentage of the net revenue received into the Federal Fund equal to the percentage of the asset owned by the United States.

(c) *Guaranty agency use of the Federal portion of a nonliquid asset.* (1)(i) If a guaranty agency uses the Federal portion of a nonliquid asset in the performance of its guaranty activities

(other than an intangible or intellectual property asset or a tangible asset of nominal value), the agency must promptly deposit into the Federal Fund an amount representing the net fair value of the use of the asset.

(ii) If a guaranty agency uses the Federal portion of a nonliquid asset for purposes other than the performance of its guaranty activities, the agency must promptly deposit into the Federal Fund an amount representing the net fair value of the use of the asset.

(2) Payments to the Federal Fund required by paragraph (c)(1) of this section must be made not less frequently than quarterly.

(Authority: 20 U.S.C. 1072-1)

[64 FR 58634, Oct. 29, 1999]

**§ 682.421 Funds transferred from the Federal Fund to the Operating Fund by a guaranty agency.**

(a) *General.* In accordance with this section, a guaranty agency may request the Secretary's permission to transfer a limited amount of funds from the Federal Fund to the Operating Fund. Upon receiving the Secretary's approval, the agency may transfer the requested funds at any time within 6 months following the date specified by the Secretary. If the Secretary has not approved or disapproved the agency's request within 30 days after receiving it, the agency may transfer the requested funds at any time within the 6-month period beginning on the 31st day after the Secretary received the agency's request. The transferred funds may be used only as permitted by §§ 682.410(a)(2) and 682.418.

(b) *Transferring the principal balance of the Federal Fund—(1) Amount that may be transferred.* Upon receiving the Secretary's approval, an agency may transfer an amount up to the equivalent of 180 days of cash expenses for purposes allowed by §§ 682.410(a)(2) and 682.418 (not including claim payments) for normal operating expenses to be deposited into the agency's Operating Fund. The amount transferred and outstanding at any time during the first 3 years after establishing the Operating Fund may not exceed the lesser of 180 days cash expenses for purposes allowed by §§ 682.410(a)(2) and 682.418 (not

including claim payments), or 45 percent of the balance in the Federal reserve fund that existed under § 682.410 as of September 30, 1998.

(2) *Requirements for requesting a transfer.* A guaranty agency that wishes to transfer principal from the Federal Fund must provide the Secretary with a proposed repayment schedule and evidence that it can repay the transfer according to its proposed schedule. The agency must provide the Secretary with the following:

(i) A request for the transfer that specifies the desired amount, the date the funds will be needed, and the agency's proposed terms of repayment;

(ii) A projected revenue and expense statement, to be updated annually during the repayment period, that demonstrates that the agency will be able to repay the transferred amount within the repayment period requested by the agency; and

(iii) Certifications by the agency that during the period while the transferred funds are outstanding—

(A) Sufficient funds will remain in the Federal Fund to pay lender claims during the period the transferred funds are outstanding;

(B) The agency will be able to meet the reserve recall requirements of section 422 of the Act;

(C) The agency will be able to meet the statutory minimum reserve level of 0.25 percent, as mandated by section 428(c)(9) of the Act; and

(D) No legal prohibition exists that would prevent the agency from obtaining or repaying the transferred funds.

(c) *Transferring interest earned on the Federal Fund.* (1) *Amount that may be transferred.* The Secretary may permit an agency that owes the Federal Fund the maximum amount allowable under paragraph (b) of this section to transfer the interest income earned on the Federal Fund during the 3-year period following October 7, 1998. The combined amount of transferred interest and the amount of principal transferred under paragraph (b) of this section may exceed 180 days cash expenses for purposes allowed by §§ 682.410(a)(2) and 682.418 (not including claim payments), but may not exceed 45 percent of the balance in the Federal reserve fund